IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 463 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAGHAJI AUKHAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 463 of 1998

MR KV SHELAT for Petitioner No. 1

MR I.M.PANDYA, APP for Respondent No. 1

MRS TRUSHA M GANDHI for Respondent No. 1

MR MB GANDHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/02/2004

ORAL JUDGEMENT

Learned counsel appearing for the petitioner/revisioner (co-accused of the original offence) appeared before this Court, before the order dictated in the open Court could be signed and, has submitted that, his submissions may be considered and recorded and the accused No.2 i.e., present petitioner may be acquitted. So, I have heard Mr.K.V.Shelat in detail in light of the submissions made by the learned advocate appearing for respondent No.1 (original complainant) and learned APP Mr. I.M.Pandya.

2. Petitioner is an accused convicted by the learned Judicial Magistrate First Class for the offence punishable under Section 420 read with Section 114 of IPC and has been imposed one year RI and fine of Rs.2000 in default to under three months RI. This order was challenged by way of appeal before the City Sessions Court. By this Revision Application, the petitioner has challenged the legality and validity of the order of conviction and sentence imposed by the learned Magistrate and confirmed by the learned Sessions Judge while dealing with the appeal.

3. Mr. Shelat has taken me through the relevant document i.e., document Exhibit-7 signed by accused No.1 Ranchhodbhai Okhaji Padhiyar while accepting the amount of Rs.61000 and the registered agreement to sell Exhibit-11 and extract from property register Exhibit-10. The language of the agreement to sell executed by both the accused and the fact that on the day on which the agreement to sell was executed, there was no formal withdrawal of the execution proceedings instituted by Jadhavji, decree holder of Civil Suit No. 1736 of 1981 and there was valid attachment of the property in question. Even, as per the documents produced by the defence side, the very property has been sold by the accused persons to one Dabgar Harshad Kumar on 24.6.1993. Copy of the sale deed has not been produced. So, it can be said that, day on which, the agreement to sell was executed in favour of the original complainant, by both the accused, because of the legal disability, they were not able to execute the sale deed as agreed and, so, I am not inclined to accept the argument of Mr. Shelat that the agreement was executed bonafide and, both the accused were otherwise willing to sell the property in question to the complainant. The amount has not been received under any inducement or with an intention to defraud the complainant, has not been accepted by both the Court on appreciation of oral as well as documentary evidence lead during trial. It is not necessary for this Court to assign reasons in detail and can adopt the reasons

assigned by the learned Sessions Judge and/or by the learned Magistrate.

4. Mr. Shelat, during the course of his argument, has placed reliance on practically four decisions and has submitted that the nature of dispute brought before the criminal court by the complainant is mainly of a civil nature and the present case would fall under illustration 'G' of Section 415 of IPC. But, considering the relevant decisions reflected in both the judgements and, the reasons assigned by the learned Magistrate while acquitting other accused persons, namely, original accused No.3, 4 & 5, I am not inclined to accept this argument. Mr. Shelat has placed reliance on following judgements:

(i) AIR 2000 SC 2341
(ii) 2001 (3) SCC 513
(iii) 2002 (1) SCC 241
(iv) 2003 (3) SCC 11
(v) 1999 Cr.LJ (SC) 598

In all these decisions, on facts, the Courts have observed that complaint/evidence of prosecution does not disclose element of deception or fraud or dishonest inducement or willful misrepresentation while entering into transaction. In the present case there is a clear element of willful misrepresentation with an intention either to induce or to commit fraud. So, these decisions would not help the appellant.

5. It is argued by Mr. Shelat that substantial amount has been received by accused No.1 Ranchhodbhai Okhaji Padhiyar and the petitioner Vaghaji Aukhaji has executed only one document whereby amount of Rs.11000 was received by both the accused and that amount has also gone to accused No.1, though, both the accused are real brothers. But, as the property was running in the name of both these brothers, it is very likely that he might have been compelled by his brother Ranchhodbhai Okhaji Padhiyar to become a signatory of the sale deed. So, at least, while appreciating the case of the prosecution, applicant Vaaghaji Aukhaji can be said to be an abetter and not the main accused. So, while developing this alternative argument, he has submitted that the quantum of punishment can be substantially reduced. It is submitted that in number of cases this Court and, even Apex Court have imposed one half of the substantive sentence to an abetter. So, if the appeal is not to be accepted, then, in that case, the substantive sentence imposed by learned Magistrate and confirmed by the

Sessions Court, should be reduced. It is submitted that it should be reduced to three months, but, I am of the view that when the accused Ranchhod Okhaji Padhiyar is imposed RI for one year, then, the substantive sentence of Vaaghaji Aukhaji can be reduced to six months.

6. I have carefully considered the decision rendered by both the Courts and, on fact, the learned Sessions Judge has rightly confirmed the finding recorded by the learned Magistrate. The Court is not required to interfere with the two concurrent findings of fact that this is a case of cheating. Undisputedly, property was attempted to sale under a miserable condition by the accused persons and, in light of that, as well as oral evidence, the learned Magistrate has rightly convicted the accused. There is no error in the decision rendered by the learned Sessions Judge while dealing with the appeal on merit, either of law or of fact. The Court, cannot ignore the interse relation between both the accused while appreciating the say of the prosecution.

7. While exercising revisional jurisdiction, this Court is not supposed to reappreciate the evidence because it is not permissible as per ratio of the decision in the case of Vimal Singh 1998 (7) SCC 223. But, while dealing with the quantum of punishment imposed to an individual accused, the Court can demarcate difference of nature of evidence lead by the prosecution. But, it is equally true that the Court can demarcate the quantum of punishment.

8. I do not find any merit in the revision application and the revision application qua the confirmation of the conviction made by the learned City Sessions Judge. Revision application of accused Vaghaji Aukhaji is partly allowed and substantive sentence imposed is reduced to six months. The fine imposed by the trial Court is confirmed. I am told that the fine has been paid. Rule is discharged accordingly. The petitioner accused is directed to surrender on or before 5.3.2004. The accused may be given set off.

(C.K.Buch,J)

Jayanti*